SUPREME COURT, U. S.

FILED

JUL 10 1975

MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

OCTOBER TERM 1975

No. 75-61

HENRY R. CARR,

Petitioner,

vs.

MERCY HOSPITAL, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, MIAMI, FLORIDA, SUPREME COURT OF FLORIDA AND THE UNITED STATES COURT OF APPEALS, 5TH CIRCUIT, NEW ORLEANS, LOUISIANA.

HENRY R. CARR, Esq.
Triangle Building
595 N.W. 91 St.
Miami, Florida, 33150

MIAMI REVIEW — 371-4853 — 377-3721

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Supreme Court
of the
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PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, MIAMI, FLORIDA, SUPREME COURT OF FLORIDA AND THE UNITED STATES COURT OF APPEALS, 5TH CIRCUIT, NEW ORLEANS, LOUISIANA.

Petitioner, HENRY R. CARR, prays that a Writ of Certiorari issue to review the decision of the District Court of Appeal of Florida, Third District, Miami, Florida, wherein judgment was entered in favor of Respondent, MERCY HOSPITAL, Inc., based upon the enforceability

of an incomplete instrument; also the denial of Petitioner's Petition for a writ to the Supreme Court of Florida, and Petitioner's suggestion to the 5th. Circuit Court of Appeals, New Orleans, Louisiana for the issuance of a certified question of law to the Florida Supreme Court.

OPINION OF THE LOWER COURT

The District Court of Appeal of Florida for the Third District, rendered its decision on June 11, 1974 (App. 1-4) and denied petition for re-hearing on August 9, 1974 (App. 4).

CITATION TO OPINION BELOW

The opinion of The District Court of Appeal of Florida for the Third District, is reported at 297 So.2d page 598. The opinion is set forth in its entirety in the Appendix hereto. (App. 1-4).

JURISDICTION

The opinion and judgment of The District Court of Appeal of Florida for the Third District was rendered on June 11, 1974. Petition for re-hearing was denied on August 9, 1974. Petitioner then sought to have reviewed, in the Supreme Court of Florida (Case No. 46,118), the decision of the District Court of Appeal of Florida for the Third District, but this was denied on December 11, 1974. Petitioner's petition for re-hearing was denied on February 18, 1975. Petitioner then filed his suggestion to the 5th Circuit Court of Appeals, New Orleans, Louisiana for the issuance of a certified question of law to the Supreme Court of The State of Florida (App. 7-13), but this was

denied on May 12, 1975. Petitioner now petitions this Honorable Court for a writ of certiorari to review the aforementioned decisions.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Section 1254 (1), and Rule 19 1(b) and 2, Part V of the Supreme Court Rules. Petitioner has been deprived of his Fifth and Fourteenth Amendment rights guaranteed by the Florida Constitution and the United States Constitution.

The opinion and judgment from which this review is sought has decided an important question of Florida State Law so as to make it in conflict with Federal Law. It calls for the exercise of this Court's Power to determine the constitutional issues herein presented.

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not the decisions of the District Court of Appeal of Florida for the Third District, Miami, Florida; the denial for a writ of certiorari by the Supreme Court of Florida, and the decision of the 5th. Circuit Court of Appeal, New Orleans, Louisiana have deprived Petitioner of due process of law and of his property without due process of law?

2. Whether or not the decision of the District Court of Appeal of Florida for the Third District is in conflict with Section 3-115 of The Uniform Commercial Code and Florida Statutes 95.11(e) and 673.3-115?

RELEVANT PART OF STATUTE INVOLVED

Section 3-115, p. 45, Vol. 2, MASTER EDITION OF THE UNIFORM COMMERCIAL CODE and Florida Statute 673.3-115 — Incomplete instruments:

> "(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed."

> "(5) Within three years. — F.S.A. 95.11(e)
>
> (e) And an action upon a contract, obligation or liability not founded upon an instrument of writing, including an action for goods, wares and merchandise sold and delivered and on store accounts."

STATEMENT OF THE CASE

On September 28, 1972, Respondent filed its complaint against Petitioner (App. 14-15), alleging Petitioner was indebted to Respondent for $8,298.70 as evidenced by Respondent's statement attached (App. 17) bearing close-out date February 4, 1969. There was also attached an alleged "Authorization" and "Agreement To Pay Unpaid Balance" (App. 19) which was signed in blank by Petitioner at the request and insistence of Respondent and which Respondent alleged: "constitutes in form and pur-

pose and intent the promissory note of the Defendant to the Plaintiff." (App. 21).

On October 31, 1972, Petitioner filed a motion for more definite statement and to dismiss (App. 23) and on June 1, 1973, Respondent filed its motion for summary judgment.

Petitioner again filed a motion for more definite statement, June 11, 1973 (App. 24-25); also his motion to strike, and motion to dismiss amended complaint, copy which had been furnished to him but not filed as of June 11, 1973. On June 20, 1973, Respondent filed its amended complaint (App. 26-30), without leave of court and without the written consent of Petitioner as required by Rule 1.190 (a) of the Florida Rules of Civil Procedure.

On June 27, 1973, Petitioner filed his motion for summary judgment, and hearings were had on both motions which were not completed due to the lack of time allotted by the Court. The Trial Judge wisely requested memoranda of law from both parties, pending final hearing on both motions. These were submitted, and a notice of hearing, by special appointment, was set by Respondent to argue all motions on November 12, 1973. However, prior to this hearing, and on October 4, 1973, Respondent filed its motion for leave to amend complaint, together with its proposed second amended complaint, which second amended complaint had attached thereto the "Authorization" and "Agreement To Pay Unpaid Balance" completed by Respondent.

At the hearing on November 12, 1973, Respondent's counsel announced to the court that he would argue his

motion for summary judgment. The court, after hearing Respondent counsel's extensive arguments and arguments by Petitioner's counsel, granted summary judgment for Petitioner. Respondent's counsel then attempted to argue his motion for leave to amend complaint, but the Trial Judge held that he had denied Respondent's motion for summary judgment, granted summary judgment for Petitioner; therefore, Respondent's motion for leave to amend its complaint was "Moot". The Trial Court entered its order to this effect on November 14, 1973. (App. 30-31). Respondent's motion for re-hearing was denied, and the Trial Judge entered his order and entry of final summary judgment for Petitioner on November 27, 1973 (App. 31-32).

Respondent then took its appeal to the District Court of Appeal, Third District, which rendered its decision on June 11, 1974 (App. 1-4).

Petitioner's timely petition for re-hearing was denied on August 9, 1974. Petitioner then sought to have reviewed, in the Supreme Court of Florida (Case No. 46,118), the decision of the District Court of Appeal for the Third District, dated June 11, 1974, the Supreme Court of Florida denied Petitioner's Petition for writ of certiorari to the District Court of Appeal for the Third District, (App. 5) and on February 18, 1975 denied Petitioner's petition for re-hearing. (App. 6). Petitioner then made a suggestion to the 5th. Circuit Court of Appeals, New Orleans, Louisiana, for the issuance of a certified question of law to the Supreme Court of The State of Florida (App. 7-13). This was denied on May 12, 1975. Petitioner now petitions this Honorable Court for a writ of certiorari to review the aforementioned decisions.

REASONS FOR GRANTING THE WRIT

Petitioner has suffered discrimination under the law, has been denied equal protection under law, has been denied due process of law and suffered the loss of his property without due process of law.

STATEMENT OF THE FACTS

MARJORIE A. CARR, deceased wife of Petitioner, HENRY R. CARR, was admitted to MERCY HOSPITAL on December 31, 1968. She remained there for 31 days and was discharged on or about February 1, 1969. At the time of her discharge, Respondent was unable to state its total charges for her care and insisted that Petitioner sign a blank instrument purporting to be an agency agreement authorizing Respondent to complete an "Agreement To Pay Unpaid Balance," (App. 19) also signed in blank by Petitioner at the time he signed the alleged "Authorization." (App. 19).

Respondent's charges for said hospitalization were in the amount of $10,324.40, less $2,000.00 paid on account February 1, 1969, leaving a balance of $8,298.70 (App. 17). When Respondent had finally determined its total charges on February 4, 1969, a statement thereof was rendered to Petitioner (App. 17) who strenuously objected to Respondent's charges as oppressive and unconscionable. Petitioner demanded that Respondent show him a break-down of Respondent's charges, justifying $332.00 per day for 31 days.

For the next several months, considerable discussion took place, by telephone, between Petitioner and one of

Respondent's representatives. On each occasion, Petitioner insisted on being furnished with Respondent's existing standard and current rates, as set forth in Respondent's regular schedules (App. 21), but this was never furnished to Petitioner, as requested.

Apparently nothing further transpired between Petitioner and Respondent until September 28, 1972 when Respondent filed suit on the alleged incomplete instruments (App. 14-15), alleging: "The said agreement constitutes in form and purpose and intent the promissory note of the Petitioner to the Respondent."

On October 31, 1972, Petitioner filed his motion for more definite statement (App. 23-24), requesting Respondent furnish him with the information he had, for many months, been trying to obtain from Respondent. Respondent never complied.

Six months and two days later, to wit, on June 20, 1973, Respondent filed its amended complaint (App. 26-30), without leave of court and without the written consent of Petitioner, as required by Rule 1.190 (a) of the Florida Rules of Civil Procedure. This un-authorized complaint alternately plead:

COUNT I

The Hospital's statement which was rendered to Petitioner in February of 1969.

COUNT II

The incomplete instrument which Respondent had alleged as a promissory note in its previous complaint is now:

"an agreement to pay any unpaid balance at the time of discharge in addition to an agreement to pay attorney's fees and interest on the unpaid balance at the rate of seven per cent (7%) per annum, including an authorization in connection therewith."

COUNT III

An account stated.

Three years, seven months, and twenty four days, after Respondent's cause of action had accrued, it filed its complaint on September 28, 1972 (App. 14-15). Four years, four months, and sixteen days, after Respondent's cause of action had accrued, it filed its amended complaint, June 20, 1973 (App. 26-30), without leave of court and without the written consent of Petitioner, as required by Rule 1.190 (a) of the Florida Rules of Civil Procedure. Thereafter and on June 1, 1973, Respondent filed its motion for summary judgment. On June 11, 1973, Petitioner again filed his motion for more definite statement (App. 23-24), requesting Respondent furnish him with the information he had, for many months, been trying to obtain from Respondent. Respondent never complied. On June 27, 1973, Petitioner also filed his motion for summary judgment.

Hearings were had on both motions which were not completed due to the lack of time allotted by the court. The Trial Judge wisely requested memoranda of law from both parties pending final hearing on both motions. These were submitted, and a Notice of Hearing, by special appointment, was set by Respondent to argue all motions on

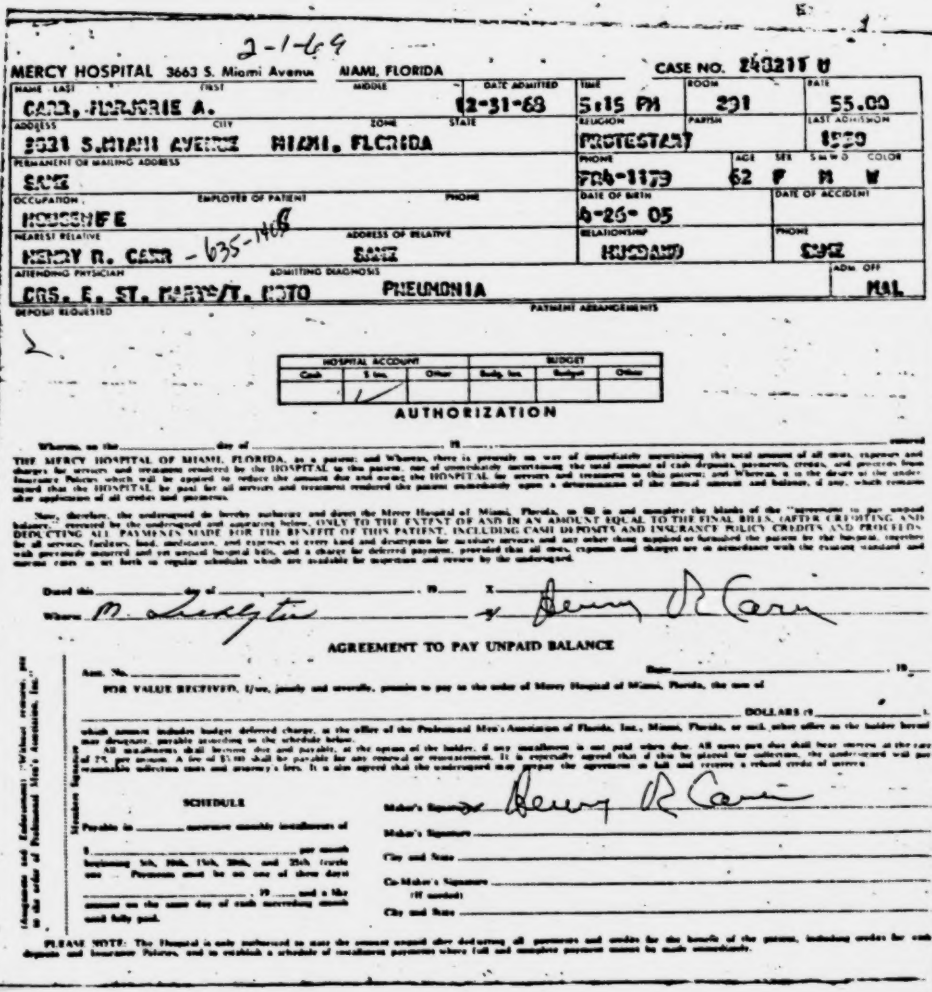
November 13, 1973. However, prior to this hearing and on October 4, 1973, Respondent filed its motion for leave to amend complaint, together with its proposed second amended complaint, which second amended complaint had attached thereto the "Authorization" and "Agreement To Pay Unpaid Balance", completed by Respondent.

At the hearing on November 12, 1973, Respondent announced to the court that it would argue its motion for summary judgment, and the court, after having heard Respondent Counsel's extensive arguments and arguments by Petitioner's counsel, granted summary judgment for Petitioner. Respondent's counsel then attempted to argue its motion for leave to amend its complaint, but the Trial Judge held that he had denied Respondent's Motion for summary judgment, granted summary judgment for Petitioner; therefore, Respondent's motion for leave to amend its complaint was "Moot". The Court entered its order to this effect on November 14, 1973 (App. 30-31). Respondent's motion for re-hearing was denied, and the Trial Judge entered his order and entry of final summary judgment for Petitioner on November 27, 1973 (App. 31-32). Respondent then took an appeal to the Third District Court of Appeal for the Third District which rendered its decision on June 11, 1974 (App. 1-4). On August 9, 1974, the Third District Court of Appeal denied Petitioner's petition for re-hearing. (App. 6). Petitioner then sought to have reviewed, in the Supreme Court of Florida (Case No. 46,118), the decision of the District Court of Appeal for the Third District, dated June 11, 1974, (App. 5), and on February 18, 1975, denied Petitioner's petition for rehearing. (App. 6). Petitioner then made a suggestion to the 5th Circuit Court of Appeals, New Orleans, Louisiana, for the issuance of a certified question of law to the Su-

preme Court of the State of Florida (App. 7-13), but this was denied on May 12, 1975. This Petition follows.

ARGUMENT

Respondent elected to bring its suit upon the following:



2-1-69

MERCY HOSPITAL 3663 S. Miami Avenue MIAMI, FLORIDA CASE NO. 240211 U

NAME LAST / FIRST / MIDDLE	DATE ADMITTED	TIME	ROOM	RATE
CARR, MARJORIE A.	12-31-68	5:15 PM	291	55.00
ADDRESS / CITY / ZONE / STATE	RELIGION	PARISH	LAST ADMISSION	
3021 S.MIAMI AVENUE MIAMI, FLORIDA	PROTESTANT		1959	
PERMANENT OR MAILING ADDRESS	PHONE	AGE	SEX	S M W D	COLOR
SAME	FRA-1179	62	F	M	W
OCCUPATION / EMPLOYER OF PATIENT / PHONE	DATE OF BIRTH		DATE OF ACCIDENT	
HOUSEWIFE	6-26-05			
NEAREST RELATIVE / ADDRESS OF RELATIVE	RELATIONSHIP		PHONE	
HENRY R. CARR - 635-1468 SAME	HUSBAND		SAME	
ATTENDING PHYSICIAN / ADMITTING DIAGNOSIS			ADM. OFF	
CRS. E. ST. MARYS/T. MOTO PNEUMONIA			MAL	

DEPOSIT REQUESTED PAYMENT ARRANGEMENTS

HOSPITAL ACCOUNT			BUDGET		
Cash	$ Inc.	Other	Budg. Acc.	Budget	Other
	✓				

AUTHORIZATION

Whereas, on the ____ day of ____, 19__, ____ entered THE MERCY HOSPITAL OF MIAMI, FLORIDA, as a patient; and Whereas, there is presently no way of immediately ascertaining the total amount of all rates, expenses and charges for services and treatments rendered by the HOSPITAL to this patient, nor of immediately ascertaining the total amount of cash deposits, payments, credits, and proceeds from Insurance Policies which will be assigned to reduce the amounts due and owing the HOSPITAL for services and treatment to this patient; and Whereas, it is the desire of the undersigned that the HOSPITAL be paid for all services and treatment rendered the patient immediately upon a determination of the actual amount and balance, if any, which remains after application of all credits and payments.

Now, therefore, the undersigned do hereby authorize and direct the Mercy Hospital of Miami, Florida, or ITS its said complete the blanks of the "Agreement to pay unpaid balance" executed by the undersigned and appearing below, ONLY TO THE EXTENT OF AND IN AN AMOUNT EQUAL TO THE FINAL BILLS, (AFTER CREDITING AND DEDUCTING ALL PAYMENTS MADE FOR THE BENEFIT OF THIS PATIENT, INCLUDING CASH DEPOSITS AND INSURANCE POLICY CREDITS AND PROCEEDS) for all services, facilities, food, medications, and expenses of every kind and description for ancillary services and any other thing supplied or furnished the patient by the hospital, together with previously incurred and yet unpaid hospital bills, and a charge for deferred payments, provided that all rates, expenses and charges are in accordance with the customary standard and normal rates as set forth in regular schedules which are available for inspection and review by the undersigned.

Dated this ____ day of ____, 19__. X ____

Witness M. Lindgren X Henry R Carr

AGREEMENT TO PAY UNPAID BALANCE

Amt. No. ____ Date ____, 19__

FOR VALUE RECEIVED, I/we, jointly and severally, promise to pay to the order of Mercy Hospital of Miami, Florida, the sum of ____ DOLLARS ($ ____), which amount includes hospital deferred charges, at the office of the Professional Men's Association of Florida, Inc., Miami, Florida, or such other office as the holder hereof may designate, payable according to the schedule below.

All installments shall become due and payable, at the option of the holder, if any installment is not paid when due. All sums past due shall bear interest, at the rate of 7% per annum. A fee of $5.00 shall be payable for any renewal or rearrangement. It is especially agreed that if this be placed for collection, the undersigned will pay reasonable collection costs and attorney's fees. It is also agreed that the undersigned may prepay the agreement in full and receive a refund credit of interest.

SCHEDULE

Payable to ____ successive monthly installments of $ ____ per month beginning 5th, 10th, 15th, 20th, and 25th (circle one) ____ Payments must be on one of these dates ____, 19__, and a like amount on the same day of each succeeding month until fully paid.

Maker's Signature Henry R Carr

Maker's Signature ____

City and State ____

Co-Maker's Signature ____ (If needed)

City and State ____

PLEASE NOTE: The Hospital is only authorized to assert the amounts stated after deducting all payments and credits for the benefit of the patient, including credits for cash deposits and insurance Policies, and to establish a schedule of installment payments where full and complete payment cannot be made immediately.

exactly as shown, contrary to Section 3-115, p. 45, Vol. 2, MASTER EDITION OF THE UNIFORM COMMERCIAL CODE and Florida Statutes 673.3-115 which clearly state that the foregoing instrument is unenforceable until completed in accordance with the authority given.

Respondent's suit was not filed against Petitioner until three years, seven months, and twenty four days, after its cause of action had accrued. Florida Statutes 95.11 (e) had therefore barred Petitioner's claim before its suit was commenced. Since Respondent elected to sue on the aforesaid incomplete instrument, the Trial Judge ruled correctly that the Statutes of Limitation barred Respondent's claim and the Uniform Commercial Code, as well as Florida Statutes 673.3-115 prevented Respondent from enforcing its incomplete instrument.

For the District Court of Appeal of Florida for the Third District to ignore the application of F.S.A. 95.11 (e), the Uniform Commercial Code, and Florida Statutes 673.3-115, operated to deprive Petitioner of equal protection under the law and due process of law. For the Court to extract, from the aforesaid incomplete instrument, only so much of its contents as would justify its decision, without, at the same time, considering the operation and effect of the entire contents of the incomplete instrument, operated to deprive Petitioner of his lawful contract rights. It mattered not that the Honorable Court reversed and remanded the Trial Judge's ruling for further proceedings as the law prevented it from doing so. This was the only instrument before the Court when it rendered its decision; the Court not having considered Respondent's proposed second amended complaint.

The anomaloy of the Court's decision then is simply this: Is it in conflict with the Uniform Commercial Code? Is it in conflict with Florida Statutes 95.11(e) and 673.3-115? Is it in conflict with the Fifth and Fourteenth amendments to the United States Constitution, as well as with the Constitution of the State of Florida with respect to the deprivation of property without due process of law, and due process of law? Petitioner argues that it is for the reasons stated herein.

CONCLUSION

Petitioner has been deprived of equal protection of the law. He has suffered the loss of his property without due process of law. He has not been afforded due process of law as the decisions of the Courts have operated to discriminate against him.

Because of the reasons and authorities set forth herein, Petitioner believes that the decisions herein sought to be reviewed are erroneous and are in conflict with the Uniform Commercial Code, Florida Statutes 95.11(e) and 673.3-115, which should be approved by this Court as the controlling law for the case sub judice in the State of Florida.

Respectfully submitted,

HENRY R. CARR
Triangle Building
595 N.W. 91st St.
Miami, Florida

CERTIFICATE

I HEREBY CERTIFY a true copy of the foregoing Petition has been furnished to:

1. Sheldon M. Simons, Esq.
   Attorney for Respondent
   507 Professional Building
   3661 South Miami Avenue
   Miami, Florida 33133

2. The Honorable William P. Carter
   Clerk of the District Court
   of Appeal, Third District
   1350 N.W. 12th Avenue
   Miami, Florida 33136

3. The Honorable Sid J. White
   Clerk of the Supreme Court
   State of Florida
   Supreme Court Building
   Tallahassee, Florida 32304

4. The Honorable Edward W. Wadsworth
   Clerk of the United States Court of Appeals
   Fifth Circuit
   Room 102, 600 Camp Street
   New Orleans, Louisiana 70130

this ____ day of July, 1975.

HENRY R. CARR, Esq.
Triangle Building
595 N.W. 91st Street
Miami, Florida 33150

APPENDIX

APPENDIX

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1974

CASE NO. 73-1494

MERCY HOSPITAL, INC.,

Appellant,

vs.

HENRY R. CARR,

Appellee.

Opinion filed June 11, 1974.

An Appeal from the Circuit Court for Dade County, Lewis B. Whitworth, Judge.

Simons & Simons, for appellant.

Carr & Emory; James A. Baccus, for appellee.

Before PEARSON, CARROLL and HAVERFIELD, JJ.

PER CURIAM.

Plaintiff-appellant seeks review of an adverse final summary judgment in this action to recover damages for services rendered.

On December 31, 1968, defendant's wife was admitted as a patient to plaintiff, Mercy Hospital. At the time of her admission, defendant-appellee Henry Carr executed a written "Authorization" to the appellant Mercy Hospital

which authorized the hospital to fill in the blanks on another form entitled "Agreement to Pay Unpaid Balance" also signed by the appellee. The above authorization provided that all charges are in accordance with existing standard and current rates as set forth in regular schedules which are available for inspection and review. The "Agreement to Pay Unpaid Balance" contained a provision for 7% interest on all sums past due and also a provision for defendant's obligation to pay attorneys' fees and costs if collection procedures had to be instituted. Several days after defendant's wife was discharged from the hospital, a statement for charges in the sum of $8,298.70 was rendered to Mr. Carr, who objected to the charges and demanded without success to see the regular schedules containing the standard current rates referred to by plaintiff hospital. Thereafter, plaintiff filed a complaint against the defendant and sought therein to recover the $8,290.70. Subsequent thereto, on June 20, 1973 plaintiff filed an amended complaint seeking alternatively (1) damages for services rendered, (2) judgment on the hereinabove instruments signed by the defendant for the amount of the charges, plus 7% interest and attorneys' fees, and (3) judgment on an account stated. In response thereto, defendant-appellant filed a motion to dismiss and as grounds therefore alleged that the amended complaint failed to state a cause of action, the action was barred by the three-year statute of limitations, and that an incomplete instrument cannot be the basis of any legal claim against the defendant who never agreed to the balance claimed by plaintiff. Both parties then moved for summary judgment. After a hearing was held thereon and the parties submitted respective memoranda of law, the trial judge granted summary judgment in favor of the defendant. Plaintiff Mercy Hospital appeals therefrom.

Appellant contends that the entry of summary judgment in favor of the defendant-appellee was error where the instruments executed in blank by the defendant clearly are a contract founded upon an instrument in writing not under seal and, therefore, are subject to the five year statute of limitations and the contract is not unenforceable for uncertainty because the method of determining the amount of the bill was defined in the instruments. We find merit in this contention and reverse.

Where there is an affirmative obligation expressed in writing to do the act for non-performance of which an action is brought and the writing is signed by the party to be charged and there is consideration for the promise, there is a contractual obligation in writing. Meehan v. Grimaldi & Grimaldi, Inc., 240 F.2d 775 (5th Cir. 1957); See also Gulf Life Ins. Co. v. Hillsborough County, 129 Fla. 98, 176 So. 72 (1937).

Turning to the case sub judice, we find that the language of this agreement is sufficient and has the essential elements cited hereinabove to determine the obligations of the respective parties and thus, we find that the subject action is founded upon instruments in writing and, therefore, F.S. § 95.11(3), F.S.A, the five-year statute of limitations, is applicable. Cf. McGill v. Cockrell, 88 Fla. 54, 101 So. 199 (1924); Insurance Co. Of The South v. Kennedy & Ely Ins., Inc., Fla.App. 1962, 143 So.2d 199.

Accordingly, we hereby reverse the summary judgment entered in favor of the defendant-appellee and remand the cause with directions to enter judgment in favor of the plaintiff-appellent on the issue of liability. However, we further find that appellee may not be bound by

the charges put in the contract as he is entitled to question the reasonableness thereof and, therefore, remand the cause for further proceedings on the issue of damages.

Reversed and remanded.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1974

FRIDAY, AUGUST 9, 1974

CASE NO. 73-1494

MERCY HOSPITAL, INC.,

Appellant,

vs.

HENRY R. CARR,

Appellee.

Counsel for appellee having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition is hereby denied. Appellant's motion to strike is denied.

A True Copy

ATTEST:

/s/ (Signature Illegible)
Clerk District Court of
Appeal, Third District

cc: Simons & Simons
Carr & Emory
James A. Baccus
/pld

SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1974
WEDNESDAY, DECEMBER 11, 1974
CASE NO. 46,118
DISTRICT COURT OF APPEAL,
THIRD DISTRICT
73-1494

HENRY R. CARR, Petitioner,

vs.

MERCY HOSPITAL, INC.,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, BOYD, McCAIN and OVERTON, JJ., concur

A True Copy

TEST:

/s/ Sid J. White

Sid J. White
Clerk, Supreme Court.

C

cc: Hon. William P. Carter, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Lewis B. Whitworth, Judge
Hon. James A. Baccus
Hon. Sheldon M. Simons

[TITLE OMITTED]

TUESDAY, FEBRUARY 18, 1975

On consideration of the Petition for Rehearing filed by attorney for petitioner,

IT IS ORDERED that said petition is denied.

ADKINS, C.J., ROBERTS, McCAIN, OVERTON and ENGLAND, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Kay D. Yent

Deputy Clerk

Y

CC: Hon. W. P. Carter, Clerk
Hon. Richard Brinker, Clerk
Hon. Lewis B. Whitworth, Judge
Hon. James A. Baccus
Hon. Sheldon M. Simons

UNITED STATES COURT OF APPEALS,
FOR THE FIFTH CIRCUIT

Case No. 75-1746

SUGGESTION FOR ISSUANCE OF CERTIFIED QUESTION OF LAW TO THE SUPREME COURT OF THE STATE OF FLORIDA

HENRY R. CARR,

Appellant,

v.

MERCY HOSPITAL, INC.,

Appellee.

COMES NOW, Appellant, HENRY R. CARR, by and through his undersigned Attorney, pursuant to Rule 4.61 of the Florida Appellate Rules, as an Interested Party in this Cause, and respectfully suggests to this Honorable Court that a certificate be issued to the Supreme Court of the State of Florida for instructions and clarification on the following question of law:

> SHOULD THE SUPREME COURT OF FLORIDA GRANT CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL TO ENFORCE FLORIDA STATUTES SECTION 673.3-115 WHERE THIS STATUTE IS IDENTICAL WITH A LIKE PROVISION OF THE UNIFORM COMMERCIAL CODE, PERTAINING TO THE ENFORCEMENT OF INCOMPLETE INSTRUMENTS, OR IS IT PERMISSIBLE TO ALLOW A MIS-APPLICATION OF

SOME OTHER INAPPLICABLE LAW TO THE ENFORCEABILITY OF AN INCOMPLETE INSTRUMENT, THEREBY CONFLICTING WITH THE LIKE PROVISION OF THE UNIFORM COMMERCIAL CODE AND DEPRIVING PETITIONER OF HIS RIGHT TO PROCEDURAL DUE PROCESS OF LAW AND PROPERTY, CONTRARY TO HIS CONSTITUTIONAL RIGHTS UNDER THE FEDERAL CONSTITUTION AND THE CONSTITUTION OF THE STATE OF FLORIDA?

The style of the case from which the above question is presented:

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 46,118

HENRY R. CARR,

Petitioner,

v.

MERCY HOSPITAL, INC.,

Respondent.

STATEMENT OF FACTS

MARJORIE A. CARR, deceased wife of Petitioner, HENRY R. CARR, was admitted to MERCY HOSPITAL on December 31, 1968. She remained there for 31 days and was discharged on or about February 1, 1969. At the time of her discharge, Respondent was unable to state its total charges for her care and insisted that Petitioner sign a blank instrument purporting to be an agency agree-

ment authorizing Respondent to complete an "Agreement To Pay Unpaid Balance," also signed in blank by the Petitioner at the time he signed the alleged "Authorization."

Respondent's charges for said hospitalization were in the amount of $10,324.40, less $2,000.00 paid on account February 1, 1969, leaving a balance of $8,298.70. When Respondent had finally determined its total charges on February 4, 1969, a statement thereof was rendered to Petitioner who strenuously objected to Respondent's charges as oppressive and unconscionable. Petitioner demanded that Respondent show him a break-down of Respondent's charges, justifying $332.00 per day for 31 days.

For the next several months, considerable discussion took place, by telephone, between Petitioner and one of Respondent's representatives. On each occasion, Petitioner insisted on being furnished with Respondent's existing standard and current rates, as set forth in Respondent's regular schedules, but this was never furnished to Petitioner, as requested.

Apparently nothing further transpired between Petitioner and Respondent until September 28, 1972 when Respondent filed suit on the alleged incomplete instruments, alleging: "The said agreement constitutes in form and purpose and intent the promissory note of the Petitioner to the Respondent." Attached hereto is a copy of this purported agreement, marked Appellant's Exhibit No. 1.

On October 31, 1972, Petitioner filed his Motion for more definite statement, requesting Respondent to furnish him with the information he had, for many months, been

trying to obtain from Respondent. Respondent never complied.

Six months and two days later, to wit, on June 20, 1973, Respondent filed its Amended Complaint, without leave of Court and without the written consent of Petitioner as required by Rule 1.190(a) of the Florida Rules of Civil Procedure. This unauthorized Complaint alternately plead:

Count I

The Hospital's statement which was rendered to Petitioner in February of 1969.

Count II

The incomplete instrument which Respondent had alleged as a promissory note in its previous complaint is now:

"an agreement to pay any unpaid balance at the time of discharge in addition to an agreement to pay attorney's fees and interest on the unpaid balance at the rate of seven per cent (7%) per annum, including an authorization in connection therewith."

Count III

An account stated.

Three years, seven months, and twenty four days, after Respondent's cause of action had accrued, it filed its Complaint on September 28, 1972. Four years, four months, and sixteen days, after Respondent's cause of action had accrued, it filed its Amended Complaint, June 20, 1973, without leave of Court and without the written consent of Petitioner, as required by Rule 1.190(a) of the

Florida Rules of Civil Procedure. Thereafter and on June 1, 1973, Respondent filed its Motion for Summary Judgment. On June 11, 1973, Petitioner again filed its Motion for More Definite Statement, requesting Respondent to furnish him with the information he had, for many months, been trying to obtain from Respondent. Respondent never complied. On June 27, 1973, Petitioner also filed his Motion for Summary Judgment.

Hearings were had on both Motions which were not completed due to the lack of time allotted by the Court. The Trial Judge wisely requested memoranda of law from both parties pending final hearing on both Motions. These were submitted, and a Notice of Hearing, by special appointment, was set by Respondent to argue all Motions on November 12, 1973. However, prior to this hearing and on October 4, 1973, Respondent filed its Motion for Leave to Amend Complaint, together with its proposed Second Amended Complaint, which Second Amended Complaint had attached thereto the "Authorization" and "Agreement To Pay Unpaid Balance," completed by Respondent.

At the hearing on November 12, 1973, Respondent announced to the Court that it would argue its Motion for Summary Judgment, and the Court, after having heard Respondent Counsel's extensive arguments and arguments by Petitioner's Counsel, granted Summary Judgment for Petitioner. Respondent's Counsel then attempted to argue its Motion for Leave to Amend its Complaint, but the Trial Judge held that he had denied Respondent's Motion for Summary Judgment, granted Summary Judgment for Petitioner; therefore, Respondent's Motion for Leave to Amend its Complaint was "Moot". The Trial Court entered its Order to this effect on November 14, 1973. Respondent's Motion for Re-hearing was denied, and the Trial

Judge entered his order and entry of Final Summary Judgment for Petitioner on November 27, 1973. Respondent then took an appeal to the Third District Court of Appeal. On the foregoing facts, the District Court of Appeal, Third District, rendered its opinion on June 11, 1974, copy attached, marked Appellant's Exhibit #2. Appellant's Petition for Re-hearing was denied and Appellant then filed his Petition for Writ of Certiorari in the Supreme Court of The State of Florida August 28, 1974. The Supreme Court of Florida denied this writ, and Petition for Rehearing was denied on February 18, 1975.

Appellant respectfully suggests there are no clear controlling precedents in the Decisions of the Supreme Court of The State of Florida which are determinative of this Cause; therefore, Appellant respectfully suggests, as an Interested Party in this Cause, that this Honorable Court issue its Certificate to The Supreme Court of the State of Florida for instructions, as to why Florida Statutes Section 673.3-115 should not be enforced in this Cause as the controlling law thereto.

Dated at Miami, Florida this 27 day of February, 1975.

JAMES A. BACCUS
Attorney for Appellant
Triangle Building
595 N.W. 91 St.
Miami, Florida 33138
Phone: 751-0771

I hereby certify a copy of the foregoing was this 28 day of February, 1975, mailed to:

1. The Honorable Sid J. White
   Clerk of the Supreme Court of Florida
   Supreme Court Building
   Tallahassee, Florida

2. The Honorable W. P. Carter
   Clerk of the Third District Court of Appeal
   1350 N.W. 12th Avenue
   Miami, Florida

3. Sheldon M. Simons, Esq.
   Attorney for Appellee
   507 Professional Building
   3661 South Miami Avenue
   Miami, Florida

James A. Baccus

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

NO. 72-20020

COMPLAINT

MERCY HOSPITAL, INC.,

Plaintiff,

vs.

HENRY R. CARR,

Defendant.

The Plaintiff, Mercy Hospital, Inc., a Florida corporation not for profit, by its undersigned attorney, Wyatt Johnson, sues the Defendant, Henry R. Carr, and alleges as follows:

1. On or about the 31st day of December, 1968, Marjorie A. Carr, the wife of the Defendant was admitted as a patient to Mercy Hospital, a hospital in Miami, Florida, owned and operated by the Plaintiff. The said patient was discharged on or about the 1st day of February, 1969, owing a balance to the Plaintiff for services rendered to the said patient by the Plaintiff at the request of the Defendant in the amount of Eight Thousand Two Hundred Ninety-Eight Dollars and 70/100 ($8,298.70). Attached to and made a part of this Complaint is a statement reflecting the charges by the Plaintiff to the wife of the Defendant.

2. The said Defendant, at the time of admission of his wife to Mercy Hospital, executed an Authorization and

Agreement to pay unpaid balance, a copy of which is attached to and made a part of this Complaint. The Agreement to Pay Unpaid Balance provides for interest at the rate of seven percent (7%) on past due sums and for reasonable collection costs and attorney's fees.

3. Although frequently requested so to do, the Defendant has failed and refused to make payment to the Plaintiff in accordance with his executed Agreement. The said Agreement constitutes in form and purpose and intent the Promissory Note of the Defendant to the Plaintiff.

WHEREFORE, the Plaintiff sues the Defendant for damages in the amount of Eight Thousand Two Hundred Ninety-Eight Dollars and 70/100 ($8,298.70) together with interest, its costs in this action and a reasonable attorney's fee for its aforesaid attorney.

MERCY HOSPITAL, INC.
a Florida corporation not for profit

By _____
Wyatt Johnson
Suite 815 2801 Ponce Bldg.
2801 Ponce de Leon Boulevard
Coral Gables, Florida 33134

COPY BOUND VERTICALLY

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[illegible], MARJORIE A.

[illegible] C. [illegible] AVENUE

MIAMI, FLORIDA

3363 S[illegible] Avenue MAIL
MIAMI, FLORIDA

ALL PATIENTS ONE DAY IN ADVANCE
ALL ACCOUNTS TO BE SETTLED BEFORE
PATIENT LEAVES THE HOSPITAL

DATE 12-31-68 ROOM .291 F RATE 55.00

DATE ADMITTED 12-31-68 TIME 5:15 P.M.
DATE DISCHARGED 2-1-69 TIME 10:15 A.M.
DOCTOR DRS. E. ST. MARY-H. KOTO

NOTE
THIS IS NOT A BILL. IT IS ONLY A STATEMENT OF CHARGES TO DATE. IN THE CASE WHERE YOU HAVE THE HOSPITAL, A STATEMENT WILL BE MAILED TO YOU.

PRIVATE ROOM RATE $55.00

DATE	MEDICINES & SUPPLIES INCL CASTS & DRESSINGS AMOUNT	CODE	COLUMN A AMOUNT	CODE	COLUMN B AMOUNT	CODE	COLUMN C AMOUNT	CODE	OPERATING ROOM OR DELIVERY ROOM	ANESTHESIA AMOUNT	CODE	X-RAY INCLUDING THERAPY	RESPIRATORY THERAPY	PAYMENTS AMOUNT	CODE	DAILY TOTAL	PROOF FACTOR	BALANCE
12-31-68																55.00	27.50	55.00
1-1-69	93.00	21.25	14	20.00	16							20.00	17.00			55.00	[illegible]	[illegible]
1-2-69	159.00	36.75	14	20.00	16								243.25			55.00	[illegible]	1,375.75
	45.00	40.40	14	20.00	16													
				80.00	20	100.00	21											
				30.00	37					8.00	4	25.00	126.00					
	45.00	6.80	14										175.00				[illegible]	[illegible]
	55.00	21.20	14	20.00	16								192.00				[illegible]	[illegible]
5.00	171.00	31.80	14	40.00	20	50.00	21					15.00	316.00			JAN6-69	1,735.73	3,471.46
20.00	92.00	15.00	14										223.60			JAN7-69	2,003.53	4,007.06
5.00	129.50	17.40	14										221.00			JAN8-69	2,248.98	4,497.96
5.00	74.75	8.80	14									25.00	170.60			JAN9-69	2,458.05	4,916.10
5.00	39.50	4.40	14									20.00	225.00			JAN1069	2,664.00	5,328.00
5.00	39.50	16.10	14										184.00			JAN1169	2,844.30	5,688.60
5.00	54.50	3.60	14										217.00			JAN1269	3,062.85	6,125.70
5.00	126.00	6.00	14	20.00	20	25.00	21						169.00			JAN1369	3,288.35	6,576.70
15.00	37.50	24.45	14	20.00	20	25.00	21						185.00			JAN1469	3,476.83	6,953.65
15.00	20.80	4.80	14										192.00			JAN1569	3,659.13	7,318.25
15.00	14.00	7.80	14									15.00	174.00			JAN1669	3,613.03	7,626.06

23	6	10	13	16,17,18,19,20,22		24,21,24,25,26												

DISCHARGE INSTRUCTIONS

F-1 Check Out
Graduate Nurse (1)
Bed.

ACCOUNT-O-MATIC CORP.
AMT. 8298.70
DATE FEB 26 1969
TR #

PROCEDURES INCLUDING SURGICAL PROCEDURES

ANY PHYSICIAN MADE TO BE RESPONSIBLE YES NO
HAVE NATIONAL CONDITION YES NO
HAVE [illegible] YES NO
HAVE [illegible] YES NO

DATE

CODES
1 - OPERATING ROOM
2 - DELIVERY ROOM
CIRCUMCISION
4 - HOSPITAL EMP
5 - E K G
13 - CASTS
OCCUPATIONAL THERAPY
14 - DRESSINGS

CODES
COLUMN C
41 - PRIVATE TELEPHONE
42 - BOTTLES OXYGEN GAS
43 - MEALS
44 -

SPECIAL SERVICES CODE EXPLANATION

COLUMN A
16 - ELECTRO CARDIOGRAM
18 - ELECTRO ENCEPHALOGRAM
19 - PHYS. THERAPY
20 - [illegible]
21 - [illegible]
22 - [illegible]
23 - [illegible]
24 - [illegible]
25 - [illegible]
26 - CARDIAC SERVICE

COLUMN B
2 - PATHOLOGY
3 - X-RAY THERAPY
21 - BLOOD PLASMA CELLS
22 - [illegible]
23 - [illegible]
24 - [illegible]
25 - [illegible]
26 - [illegible]
27 - [illegible]
28 - [illegible]
29 - [illegible]
30 - [illegible]
31 - [illegible]
32 - [illegible]
33 - [illegible]
34 - [illegible]
35 - [illegible]
36 - [illegible]
37 - [illegible]
38 - [illegible]
39 - [illegible]
40 - [illegible]

PAYMENTS AND CREDITS

30 - CASH PAYMENT
31 - OP PAYMENT
32 - MED CARE PAYMENT
33 - MEDICARE OP
34 - PMA WD
35 - GENERAL LEDGER
60 - W/O
61 - PMA W O
62 - REFUND
63 - TRANSFERS

2-1-69

MERCY HOSPITAL 3663 S. Miami Avenue MIAMI, FLORIDA CASE NO. 248218 U

NAME - LAST / FIRST / MIDDLE: CARR, JURGRIS A.	DATE admitted: 12-31-68	Hour: 5:15 PM	ROOM: 201	RATE: 55.00	
ADDRESS / CITY / ZONE / STATE: 3031 S.MIAMI AVENUE MIAMI, FLORIDA		RELIGION: PROTESTANT	PARISH	LAST ADMISSION: 1969	
PERMANENT OR MAILING ADDRESS: SAME		PHONE: FR4-8173	AGE: 62	SEX: S M W D F	COLOR: W
OCCUPATION: HOUSEWIFE / EMPLOYER OF PATIENT / PHONE		DATE OF BIRTH: 6-26-05		DATE OF ACCIDENT	
NEAREST RELATIVE: HENRY R. CARR - 635-1468 / ADDRESS OF RELATIVE: SAME		RELATIONSHIP: HUSBAND		PHONE: SAME	
ATTENDING PHYSICIAN: DRS. E. ST. MARY/T. KOTO / ADMITTING DIAGNOSIS: PNEUMONIA					ADM. OFF: M&L

DEPOSIT REQUESTED

PAYMENT ARRANGEMENTS

HOSPITAL ACCOUNT			BUDGET		
Cash	$ Inc.	Other	Daily Inc.	Budget	Other
	✓				

AUTHORIZATION

Whereas, on the _____ day of _____, 19__, _____ entered THE MERCY HOSPITAL OF MIAMI, FLORIDA, as a patient, and Whereas, there is presently an item of unascertainable uncertainty the total amount of all costs, expenses and charges for services and treatment rendered by the HOSPITAL to the patient, and of unascertainable uncertainty the total amount of cash deposits, payments, credits, and allowances, Group Insurance Policies which will be applied to reduce the amount due and owing the HOSPITAL for services and treatment to the patient; and Whereas, it is the desire of the undersigned that the HOSPITAL be paid for all services and treatment rendered the patient immediately upon a determination of the latest amount and balance, if any, which remains due and owing after application of all credits and payments.

Now, therefore, the undersigned do hereby authorize and direct the Mercy Hospital of Miami, Florida, or any of its said employees the Manager of the Corporation to pay or cause to be paid to the undersigned and subscribing patient ONLY TO THE EXTENT OF AND IN AN AMOUNT EQUAL TO THE FINAL BILL, AFTER CREDITING AND DEDUCTING ALL PAYMENTS MADE FOR THE BENEFIT OF THIS PATIENT, INCLUDING CASH DEPOSITS AND INSURANCE POLICY CREDITS AND PROCEEDS for all services, facilities, food, medications, and expenses of every kind and description for necessary services and any other items, expenses or damages rendered to the patient by the hospital, together with previously incurred and not invoiced hospital bills, and a charge for deferred payments, provided that all costs, expenses and charges are in accordance with the customary standard and normal rates as set forth in regular schedules which are available for inspection and review by the undersigned.

Dated this _____ day of _____, 19__. X Henry R Carr

Witness M. Lasley

AGREEMENT TO PAY UNPAID BALANCE

Date _____, 19__

Acct. No. _____

FOR VALUE RECEIVED, I/we, jointly and severally, promise to pay to the order of Mercy Hospital of Miami, Florida, the sum of _____ DOLLARS ($_____), which amount includes hospital delivered charges, at the office of the Professional Men's Association of Florida, Inc., Miami, Florida, or such other office as the holder hereof may designate, payable according to the schedule below:

All installments shall become due and payable, at the option of the holder, if any installment is not paid when due. All sums not due shall bear interest at the rate of 7% per annum. A fee of $5.00 shall be payable for any returned or nonsufficient check. If this note be placed for collection, the undersigned will pay reasonable collection costs and attorney's fees. It is also agreed that the undersigned may prepay the agreement in full and receive a refund credit of interest.

SCHEDULE

Payable in _____ successive monthly installments of $_____ per month beginning 5th, 10th, 15th, 20th, and 25th (circle one). Payments must be on one of these dates _____, 19__, and a like amount on the same day of each succeeding month until fully paid.

Maker's Signature Henry R Carr

Maker's Signature _____

City and State _____

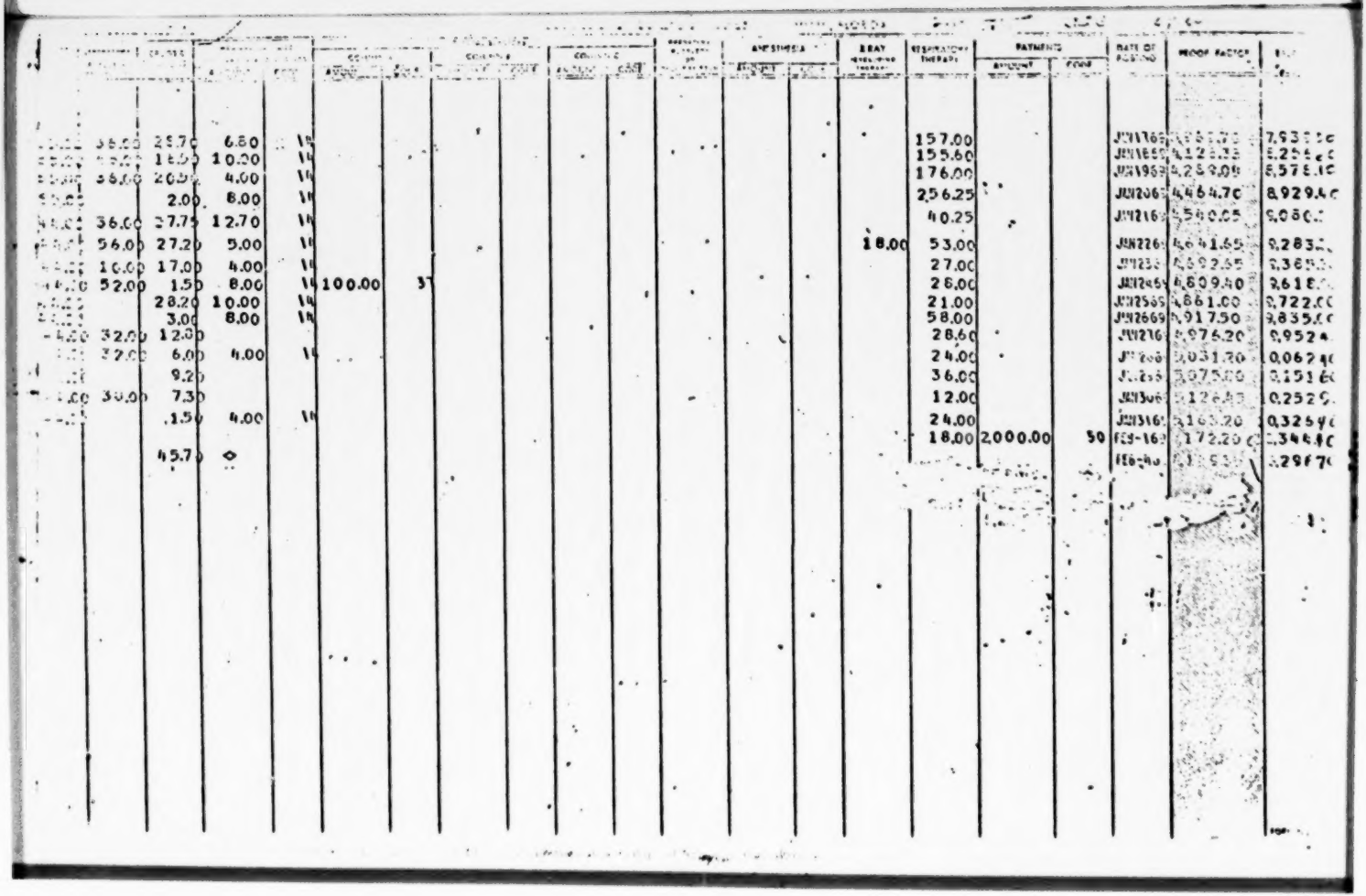
Co-Maker's Signature _____ (If needed)

City and State _____

Assignment and Endorsement (Without recourse) of the above note to Professional Men's Association, Inc.

PLEASE NOTE: The Hospital is only authorized to mail the statement attached after discharging all payments and credits for the benefit of the patient, including credits for Group Insurance Policies, and to establish a schedule of installment payments where full and complete payments cannot be made immediately.

COPY BOUND CLOSE TO EDGE



[TITLE OMITTED]

(Thos E. Lee, Jr.)

MOTION FOR MORE DEFINITE STATEMENT

MERCY HOSPITAL, INC.,

Plaintiff,

vs.

HENRY R. CARR,

Defendant.

The Defendant, by and through his undersigned attorneys, moves the Court to require the Plaintiff to file a more definite statement with regard to the Complaint herein, and says that said Complaint is so vague and ambiguous that the Defendant can not reasonably frame a responsive pleading until the Plaintiff amends the Complaint herein with regard to the following:

1. Require the Plaintiff to set out in itemized detail the specific treatment, medication or therapy furnished to Marjorie A. Carr during the period of her hospitalization.

2. Require the Plaintiff to set out in itemized detail the specific charge for each specific treatment, medication or therapy furnished to MARJORIE A. CARR during the period of her hospitalization.

3. Require the Plaintiff to file a copy of the regular schedules which are available for inspection and which are allegedly in accordance with existing standard and current rates at the time said obligation was allegedly incurred.

4. Require the Plaintiff to specify the exact dates the patient was treated in the Intensive Care Unit.

WHEREFORE, Defendant moves that the Plaintiff be required to furnish more definite statement as aforesaid.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to Wyatt Johnson, Suite 815, 2801 Ponce Bldg., Coral Gables, Florida 33134, Attorney for Plaintiff, this 31st day of October, 1972.

CARR AND EMORY
1440 N.W. 14th Avenue
Miami, Florida 33125
BY: Henry R. Carr

[TITLE OMITTED]

MOTION FOR MORE DEFINITE STATEMENT

The Defendant, by and through his undersigned Attorney, moves this Honorable Court to require the Plaintiff to file a more definite statement with regard to its Amended Complaint filed herein, and says that said Amended Complaint is so vague and ambiguous that the Defendant cannot reasonably frame a responsive pleading thereto until the Plaintiff furnishes the following:

1. Require the Plaintiff to set out in itemized detail the specific treatment, medication or therapy furnished to MARJORIE A. CARR, during the period of her hospitalization.

2. Require the Plaintiff to set out in itemized detail the specific charge for each specific treatment, medication or therapy furnished to MARJORIE A. CARR during the period of her hospitalization.

3. Require the Plaintiff to file a copy of the regular schedules which are available for inspection and which are allegedly in accordance with existing standards and current rates at the time said obligation was allegedly incurred.

4. Require the Plaintiff to specify the exact dates the patient was treated in the Intensive Care Unit.

WHEREFORE, Defendant Moves that the Plaintiff be required to furnish more definite statement, as aforesaid.

Dated at Miami, Florida this 7 day of June, 1973.

JAMES A. BACCUS
Attorney for Defendant
Triangle Building
595 N.W. 91st St.
Miami, Florida
Phone: 757-4955

I hereby certify that a copy of the foregoing Motion for more Definite Statement was this 8 day of June, 1973, mailed to Simons & Simons, Attorneys for Plaintiff, 3025 Coral Way, Miami, Florida.

J. A. Baccus

[TITLE OMITTED]

AMENDED COMPLAINT

MERCY HOSPITAL, INC.,

Plaintiff,

v.

HENRY R. CARR,

Defendant.

COMES NOW the plaintiff, MERCY HOSPITAL, INC., and sues the defendant, HENRY R. CARR, and alleges as follows:

COUNT I

1. That the plaintiff is a corporation, not for profit, organized and existing under and by virtue of the Laws of the State of Florida.

2. That the defendant is over the age of twenty-one (21) years and a resident of Dade County, Florida, and was the husband of MARJORIE A. CARR during the period of December 31, 1968, through February 1, 1969.

3. That on or about the 31st day of December, 1968, MARJORIE A. CARR, the wife of the defendant, was admitted as a patient to MERCY HOSPITAL, a Hospital in Miami, Florida, owned and operated by the plaintiff, and was a patient therein up to and including the date of her discharge, on or about February 1, 1969.

4. That at the time of the patient's discharge there was a balance due and owing to the plaintiff by the de-

fendant, for services rendered to the said wife of the defendant by the plaintiff, in the amount of Eight Thousand Two Hundred Ninety Eight Dollars Seventy Cents ($8,298.70).

5. That said services were rendered by the plaintiff at the special instance and request of the defendant.

6. That attached hereto and made a part hereof is a true copy of the statement reflecting charges by the plaintiff for services rendered to the wife of the defendant.

7. That this is an action for damages that are within the jurisdiction of this court.

8. That demand has been made upon said defendant for payment of the sum of $8,298.70, but that defendant has failed, refused or neglected to pay same.

WHEREFORE, plaintiff prays for judgment against the defendant in the sum of $8,298.70 plus interest from February 1, 1969, and the costs and disbursements of this action.

COUNT II

9. Plaintiff realleges and reiterates paragraphs 1 through 8 of Count I hereof as though fully set forth herein and alleges further:

10. That the defendant, at the time of admission of his wife to MERCY HOSPITAL, executed an agreement to pay any unpaid balance at the time of discharge in

addition to an agreement to pay attorneys' fees and interest on the unpaid balance at the rate of seven percent (7%) per annum, including an authorization in connection therewith, a true copy of which is attached hereto and made a part hereof.

WHEREFORE, the plaintiff prays for judgment against the defendant in the sum of $8,298.70, plus interest at the rate of seven percent (7%) per annum from February 1, 1969, thereon, in addition to attorneys' fees and costs incurred by the plaintiff.

COUNT III

11. Plaintiff realleges and reiterates paragraphs 1 through 10 of Counts I and II hereof, as though fully set forth herein, and further alleges:

12. That prior to the institution of the above-styled action, the plaintiff rendered a statement of the account to the defendant and the plaintiff received no objection to same by the defendant.

13. That an account was stated by and between the parties in the sum of $8,298.70.

14. That the defendant owes to the plaintiff the sum of $8,298.70 that is due with interest since February 1, 1969, according to the attached account for services rendered to the wife of the defendant as reflected by said account attached.

WHEREFORE, plaintiff prays for a judgment against the defendant in the sum of $8,298.70 together with interest and attorneys' fees and costs.

SIMONS & SIMONS
3025 Coral Way
Miami, Fla. 33145
Attorneys for Plaintiff

BY: Sheldon M. Simons

I do certify that copies hereof have been furnished to all attorneys of record by mail this _____ day of _____ 19____.

SIMONS & SIMONS

STATE OF FLORIDA)
: SS
COUNTY OF DADE)

BEFORE ME, the undersigned authority duly authorized administer oaths and take acknowledgments, personally appeared HERBERT E. LONG, who being duly sworn by me, deposes and says:

1. That he is the Assistant Director in Charge of Fiscal Administration at Mercy Hospital, Miami, Dade County, Florida; and

2. That he has read the allegations of the Amended Complaint herein relative to the charges and amounts paid

and balance due and services rendered and that same are true and correct.

HERBERT E. LONG

Sworn to and subscribed before me this ____ day of May, 1973, at Miami, Dade County, Florida.

Notary Public

My Commission expires:

[TITLE OMITTED]

(Judge Whitworth)

ORDER

MERCY HOSPITAL, INC.,

Plaintiff,

v.

HENRY R. CARR,

Defendant.

THIS CAUSE, coming on to be heard this 12th day of November, 1973, upon the Plaintiff's and Defendant's Motions for Summary Judgment, and the Court having considered the Memoranda of Law submitted by both parties and their respective Counsel's Arguments thereon, and the Court being fully advised in the premises, it is thereupon ORDERED, ADJUDGED and DECREED, as follows:

1. The Plaintiff's Motion for Summary Judgment be and the same is hereby denied.

2. The Defendant's Motion for Summary Judgment be and the same is hereby granted.

3. The Court, having granted Defendant's Motion for Summary Judgment, finds that the Plaintiff's Motion to file its amended complaint is Moot; therefore, Plaintiff's Motion to file its amended complaint be and the same is hereby denied.

DONE and ORDERED, In Chambers at Miami, Dade County, Florida this 14 day of November, 1973.

_____

Circuit Judge

[TITLE OMITTED]

ORDER AND ENTRY OF FINAL SUMMARY JUDGMENT

MERCY HOSPITAL, INC.,

Plaintiff,

vs.

HENRY R. CARR,

Defendant.

THIS CAUSE, coming on to be heard this 12th day of November, 1973, upon the Plaintiff's and Defendant's Motions for Summary Judgment, and the Court having considered the Memoranda of Law submitted by both parties and their respective Counsel's Argument thereon, and the Court having entered an Order dated 14th of November, 1973, the Court now upon its own motion and being fully advised in the premises, it is thereupon ORDERED, ADJUDGED and DECREED, as follows:

1. The Plaintiff's Motion for Summary Judgment be and the same is hereby denied.

2. The Defendant's Motion for Summary Judgment be and the same is hereby granted.

3. The Court, having granted Defendant's Motion for Summary Judgment, finds that the Plaintiff's Motion to file its amended complaint is Moot; therefore, Plaintiff's Motion to file its amended complaint be and the same is hereby denied.

DONE and ORDERED, In Chambers at Miami, Dade County, Florida this 26th day of November, 1973.

/s/ (Signature Illegible)

CIRCUIT JUDGE

Supreme Court, U. S.
FILED
JUL 24 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-61

HENRY R. CARR,

Petitioner,

vs.

MERCY HOSPITAL, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, 5TH CIRCUIT, NEW ORLEANS, LOUISIANA.

ADDENDUM TO APPENDIX

HENRY R. CARR, Esq.
Triangle Building
595 N.W. 91 St.
Miami, Florida, 33150

MIAMI REVIEW — 371-4853 — 377-3721

U.S. COURT OF APPEALS
FILED
MAY 12 '75
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 75-1746

HENRY R. CARR,

Plaintiff-Appellant,

versus

MERCY HOSPITAL, INC.,

Defendant-Appellee.

Before BROWN, Chief Judge, GODBOLD and GEE, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motions of Henry R. Carr for issuance of certified question of law to the Supreme Court of the State of Florida and for stay of the issuance of the mandate of that Court are DENIED and this proceeding is DISMISSED.